

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

KELLY KOERNER,

Plaintiff,

v.

JAMES GREG COX, *et al.*,

Defendants.

3:11-cv-00116-LRH-VPC

ORDER

Before this Court is the Report and Recommendation of U.S. Magistrate Judge Valerie P. Cooke (#32<sup>1</sup>) entered on December 8, 2011, recommending granting in part and denying in part Defendants' Motion to Dismiss (#19) filed on July 12, 2011. Plaintiff filed his Non Objection to Magistrate Judge's Report and Recommendation (#33) on December 20, 2011. Defendants did not file a reply. The action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)B and the Local Rules of Practice, LR IB 1-4.

The Court has conducted its *de novo* review in this case, has fully considered the non objection of the Plaintiff, the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and Recommendation (#32) entered on December 8, 2011, should be

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<sup>1</sup>Refers to court's docket number.

1 adopted and accepted.

2 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation (#32)  
3 entered on December 8, 2011, is adopted and accepted, and Defendant's Motion to Dismiss (#19) is  
4 **GRANTED in part and DENIED in part** as follow:

- 5 1. Defendants' motion to dismiss Defendants in their official capacities based on Eleventh  
6 Amendment immunity should be **GRANTED**, and Plaintiff's monetary damages claims  
7 against Defendants in their official capacities should be **DISMISSED with prejudice**; and
- 8 2. Defendants' motion to dismiss based on Plaintiff's failure to state a claim, Defendants' lack  
9 of personal participation, and qualified immunity should be **DENIED without prejudice**.

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11 IT IS SO ORDERED.

12 DATED this 10th day of January, 2012.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE